

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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U.S. DISTRICT COURT
DISTRICT OF MASS.

TINA JENULESON

Plaintiff,

vs.

KRIPALU HOLDING CORPORATION d/b/a
KRIPALU CENTER FOR YOGA & HEALTH,
KRIPALU YOGA FELLOWSHIP, INC. d/b/a
KRIPALU CENTER FOR YOGA & HEALTH
AND SETH LEVY.

Defendants.

Civil Action No.

05-30029-KPN

COMPLAINT AND JURY DEMAND

This is an action to recover for physical and emotional injuries which plaintiff sustained as a result of an improper "therapeutic" massage administered by an employee of defendants at the Kripalu Center for Yoga & Health in Stockbridge, Massachusetts.

PARTIES

1. Tina Jenuleson is an individual with a residential address at 111 Lake Street, Unit 8, Englewood, New Jersey 07631.
2. Kripalu Yoga Fellowship, Inc. is a corporation organized under the laws of the Commonwealth of Pennsylvania with a principal place of business located in Lenox, Massachusetts 01240. Upon information and belief, Kripalu Yoga Fellowship, Inc. does business as Kripalu Center for Yoga & Health at 57 Interlaken Road, Stockbridge, Massachusetts 01262.

3. Kripalu Holding Corporation is a corporation organized under the laws of the Commonwealth of Massachusetts with a principal place of business located in Lenox, Massachusetts 01240. Upon information and belief, Kripalu Holding Corporation does business as Kripalu Center for Yoga & Health at 57 Interlaken Road, Stockbridge, Massachusetts 01262.

4. Seth Levy is an individual with a last known address in East Nassau, New York 12062.

JURISDICTION

5. This Court has jurisdiction under 28 U.S.C. § 1332(a) because the parties are all citizens of different states and the amount in controversy exceeds \$75,000.

6. This Court has jurisdiction over Mr. Levy pursuant to M.G.L. c. 223A, § 3 because he committed a tortious act and Ms. Jenuleson sustained damages in the Commonwealth of Massachusetts.

7. Venue in this District is proper under 28 U.S.C. § 1391(a) because a defendant is resident in this District and because the events giving rise to the plaintiff's claims occurred here.

RELEVANT FACTS

8. On or about March 30, 2004, Ms. Jenuleson purchased a four (4) day "Transformative Healing Retreat" from the Kripalu Center for Yoga & Health (hereinafter referred to as the "Kripalu Center"), a facility owned and operated by the corporate defendants ("Kripalu Defendants").

9. The Transformative Healing Retreat included a 50-minute "Kripalu Bodywork" massage session.

10. Ms. Jenuleson arrived for the Transformative Healing Retreat on April 11, 2004. Her massage session was scheduled for 9:00 p.m. that day. Seth Levy was the massage therapist scheduled to conduct Ms. Jenuleson's massage.

11. Mr. Levy was an employee of the Kripalu Defendants and was assigned by them to perform the massage for Ms. Jenuleson.

12. The massage began with Ms. Jenuleson lying on a massage table, with a blanket draped over her private areas. Throughout the massage, Ms. Jenuleson remained lying on her back.

13. On several occasions during the massage, Mr. Levy allowed the blanket to move and expose Ms. Jenuleson's breasts.

14. During the massage, Mr. Levy complimented Ms. Jenuleson on her appearance and her flexibility, resulting in an inappropriate and sexualized environment. Mr. Levy once placed Ms. Jenuleson's foot in his crotch area and he grazed his hand across her private areas.

15. Also during the massage, Mr. Levy allowed the entire blanket to come off of Ms. Jenuleson, completely exposing her nude body. Mr. Levy asked Ms. Jenuleson if the blanket removal was agreeable to her, to which she replied in the negative.

16. Mr. Levy then acknowledged that his blanket draping procedure was improper and inappropriate and quickly ended the massage session. It was not until Ms. Jenuleson exited the massage room that she was able to appreciate the fact that the massage had lasted more than twice as long as the allotted time of 50 minutes.

17. Ms. Jenuleson immediately reported the incident to a Kripalu Center security guard. She then returned to her room to pack her belongings to leave the Kripalu Center the next morning.

18. At approximately 6:30 a.m., on April 12, 2004, Ms. Jenuleson reported the incident to the Head of Security of the Kripalu Center. Ms. Jenuleson stated that she wanted to report the incident to the local police.

19. Approximately 30 minutes later, the Director of Operations for the Kripalu Center sought to discuss the incident with Ms. Jenuleson, who reiterated her desire to report the incident to the police.

20. The police arrived at the Kripalu Center and took statements from Ms. Jenuleson and from Mr. Levy.

21. Within days of the incident, the Kripalu Center terminated Mr. Levy's employment.

22. In or about December 2003, while defendants' employee, Mr. Levy had engaged in similar, inappropriate draping of a female massage client at the Kripalu Center. Defendants' management was aware of that incident in December 2003 as of April 11, 2004.

23. Upon information and belief, the Kripalu Center and the Kripalu Defendants were aware, prior to April 11, 2004, of other incidents involving improper and/or inappropriate conduct committed by Mr. Levy within the scope of his employment as a licensed massage therapist.

24. It was foreseeable to the defendants that Mr. Levy would commit additional improper acts on massage clients of the Kripalu Center.

25. Mr. Levy's conduct toward Ms. Jenuleson was offensive, grossly contrary to the purposes of her visit, and anathema to the principles of Kripalu massage therapy - holistic healing and the "sacredness of the body" - espoused and advertised by the Kripalu Center.

Count I

Negligent Retention and Supervision (Tina Jenuleson v. Kripalu Defendants)

26. The Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1 through 25 of her complaint the same as if set forth herein.

27. As the owners and operators of the Kripalu Center, the Kripalu Defendants owed Ms. Jenuleson, who was their guest and client, a duty to exercise reasonable care in hiring, training, supervising and retaining their employees, including Mr. Levy, in performing the duties of their employment at the Kripalu Center.

28. The Kripalu Defendants breached their duty of care to Ms. Jenuleson by failing to take appropriate corrective or disciplinary action with respect to Mr. Levy, including action related to the client complaint(s) lodged against him prior to April 11, 2004.

29. As a direct and proximate result of the Kripalu Defendants' negligent hiring, training, supervision and retention of Mr. Levy, Ms. Jenuleson has suffered and will continue to suffer emotional and physical injuries.

Wherefore, the Plaintiff demands judgment against the Kripalu Defendants in an amount adequate to compensate her, to be determined at trial, plus interest, attorneys' fees and costs.

Count II

Negligence and Respondeat Superior (Ms. Jenuleson v. Seth Levy and Kripalu Defendants)

30. Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1 through 29 of her complaint the same as if set forth herein.

31. As a licensed massage therapist, Mr. Levy owed Ms. Jenuleson a duty to exercise reasonable care in conducting her massage session.

32. Mr. Levy breached his duty of care to Ms. Jenuleson by sexualizing her massage session. He violated the accepted standards of massage therapy through improper draping procedure, inappropriate comments, sexualized touching, and continuation of the massage of Ms. Jenuleson beyond the time parameters established by the Kripalu Center.

33. At all times relevant, Mr. Levy was an employee of the Kripalu Center and was acting within the scope of his employment as a massage therapist at the Kripalu Center. Mr. Levy's actions as alleged herein are attributable to the Kripalu Center.

34. As a direct and proximate result of Mr. Levy's negligence, Ms. Jenuleson has suffered and will continue to suffer emotional and physical injuries.

Wherefore, the Plaintiff demands judgment against Seth Levy and against the Kripalu Defendants in an amount adequate to compensate her, to be determined at trial, plus interest, attorneys' fees and costs.

Count III

Negligent Infliction of Emotional Distress (Ms. Jenuleson v. Seth Levy and Kripalu Defendants)

35. The Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1 through 34 the same as if set forth herein.

36. Mr. Levy's conduct during the course of Ms. Jenuleson's massage session was extreme and outrageous so as to be deemed offensive by a reasonable person.

37. At all times relevant, Mr. Levy was an employee of the Kripalu Center and was acting within the scope of his employment as a massage therapist at the Kripalu Center.

38. Given their knowledge of prior incidents or complaints involving Mr. Levy's massage practices, it was foreseeable to the Kripalu Defendants that his continued employment and assignment to perform massages would result in improper activity and emotional distress to patrons such as Ms. Jenuleson.

39. Mr. Levy's actions as alleged herein are attributable to the Kripalu Center.

40. As a direct and proximate result of Mr. Levy's extreme and outrageous conduct during her massage session, Ms. Jenuleson has suffered, and continues to suffer, severe emotional distress which has been manifested by various physical symptoms.

Wherefore, the Plaintiff demands judgment against Seth Levy and against the Kripalu Defendants in an amount adequate to compensate her, to be determined at trial, plus interest, attorneys' fees and costs.

Count IV

**Assault
(Ms. Jenuleson v. Seth Levy)**

41. The Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1 through 40 of her complaint the same as if set forth herein.

42. Mr. Levy intended to cause a harmful and offensive contact with Ms. Jenuleson during the course of her massage session.

43. Mr. Levy's intent and actions placed Ms. Jenuleson in apprehension of such harmful and offensive contact during her massage session.

44. As a direct and proximate result of Mr. Levy's conduct, Ms. Jenuleson has suffered and will continue to suffer emotional and physical injuries.

Wherefore, the Plaintiff demands judgment against Seth Levy in an amount adequate to compensate her, to be determined at trial, plus interest, attorneys' fees and costs.

Count V

**Battery
(Ms. Jenuleson v. Seth Levy)**

45. The Plaintiff restates and incorporates by reference the allegations contained in Paragraphs 1 through 44 of her complaint the same as if set forth herein.

46. Mr. Levy conducted the massage of Ms. Levy with the intent of inflicting upon her harmful and offensive contact.

47. Mr. Levy committed such harmful and offensive conduct upon the person of Ms. Jenuleson by the manner in which he conducted the massage session.

48. Ms. Jenulson did not consent to be touched, exposed or otherwise treated in the manner of Mr. Levy's conduct

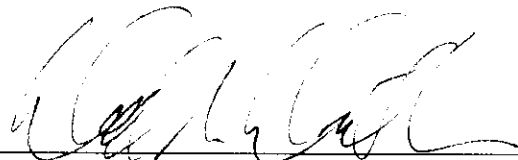
49. As a direct and proximate result of Mr. Levy's conduct, Ms. Jenuleson has suffered and will continue to suffer emotional and physical injuries.

Wherefore, the Plaintiff demands judgment against the Seth Levy in an amount adequate to compensate her, to be determined at trial, plus interest, attorneys' fees and costs.

JURY DEMAND

Pursuant to Fed. R. Civ. P. 38, the Plaintiff hereby requests a trial by jury of all issues so triable.

TINA JENULESON
By her attorneys,



Steven J. Brooks, BBO# 059140
Daniel R. Deutsch, BBO# 551744
DEUTSCH WILLIAMS BROOKS
DERENSIS & HOLLAND, P.C.
99 Summer Street
Boston, MA 02110-1213
(617) 951-2300
ddeutsch@dwbboston.com

Date: January 26, 2005

JS 44 (Rev. 11/04)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TINA JENULESON

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) 617-951-2300
Daniel R. Deutsch, Deutsch Williams
99 Summer Street, Boston, MA 02110

DEFENDANTS

KRIPALU HOLDING CORPORATION d/b/a
KRIPALU CENTER FOR YOGA & HEALTH, et al.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | | | | |
|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| PTF | DEF | | PTF | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Citizen of This State | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| | | Incorporated or Principal Place of Business In This State | | |
| | <input checked="" type="checkbox"/> 2 | Citizen of Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| | | Incorporated and Principal Place of Business In Another State | | |
| | <input type="checkbox"/> 3 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| | | Foreign Nation | | |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influences and Corrupt Organization <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609				

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Plaintiff seeks damages against the operator of a spiritual and holistic spa for its negligent retention and supervision of its masseur, and against that masseur, who subjected the plaintiff resort guest to indecent contact and behavior during a therapeutic massage.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMANDS: ☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

None

(See instructions):

JUDGE

DOCKET NUMBER

DATE

1/26/05

SIGNATURE OF ATTORNEY OF RECORD

Daniel R. Deutsch, Esq.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

305

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Tina Jenuleson v. Kripalu Holding Corporation d/b/a Kripalu Center for Yoga and Health, et al.
2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).
- ☐ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ☐ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- ☒ III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ☐ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ☐ V. 150, 152, 153.
3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.
- N/A
4. Has a prior action between the same parties and based on the same claim ever been filed in this court?
- YES ☐ NO ☒
5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)
- YES ☐ NO ☒
- If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?
- YES ☐ NO ☐
6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?
- YES ☐ NO ☒
7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).
- YES ☒ NO ☐
- A. If yes, in which division do all of the non-governmental parties reside?
- Eastern Division ☐ Central Division ☐ Western Division ☒
- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?
- Eastern Division ☐ Central Division ☐ Western Division ☐
8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)
- YES ☐ NO ☐
- (PLEASE TYPE OR PRINT)
- ATTORNEY'S NAME Daniel R. Deutsch, Esq.
- ADDRESS Deutsch Williams, 99 Summer Street, Boston, MA 02110
- TELEPHONE NO. 617-951-2300